

GENERAL TERMS AND CONDITIONS ARCH-embedded B.V.

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Definitions

1. ARCH-embedded B.V.: ARCH-embedded B.V., established in Purmerend, Chamber of Commerce no. 87884429.
2. Customer: the party which ARCH-embedded B.V. has entered into an agreement with.
3. Parties: ARCH-embedded B.V. and customer together.
4. Consumer: a customer who is an individual acting for private purposes.

Applicability

1. These terms and conditions will apply to all quotations, offers, activities, orders, agreements and deliveries of services or products by or on behalf of ARCH-embedded B.V..
2. Parties can only deviate from these conditions if they have explicitly agreed upon in writing.
3. The parties expressly exclude the applicability of supplementary and/or deviating general terms and conditions of the customer or of third parties.

Offers and quotations

1. Offers and quotations from ARCH-embedded B.V. are without engagement, unless expressly stated otherwise.
2. An offer or quotation is valid for a maximum period of 2 weeks from its date, unless another acceptance period is stated in the offer or quotation.
3. If the customer does not accept an offer or quotation within the applicable time frame, the offer or quotation will lapse.
4. Offers and quotations do not apply to repeated orders, unless the parties have agreed upon this explicitly and in writing.

Acceptance

1. Upon acceptance of a quotation or offer without engagement, ARCH-embedded B.V. reserves the right to withdraw the quotation or offer within 3 days after receipt of the acceptance, without any obligations towards the customer.
2. Verbal acceptance of the customer only commits ARCH-embedded B.V. after the customer has confirmed this in writing (or electronically).

Prices

1. All prices used by ARCH-embedded B.V. are in euros, are exclusive of VAT and exclusive of any other costs such as administration costs, levies and travel-, shipping- or transport expenses, unless expressly stated otherwise or agreed otherwise.
2. ARCH-embedded B.V. is entitled to adjust all prices for its products or services, shown in its shop, on its website or otherwise, at any time.
3. Increases in the cost prices of products or parts thereof, which ARCH-embedded B.V. could not foresee at the time of making an offer or the conclusion of the agreement, may give rise to price increases.
4. The consumer has the right to terminate an agreement as a result of a price increase as referred to in paragraph 3, unless the increase is the result of statutory regulation.
5. The price with regard to services is determined by ARCH-embedded B.V. on the basis of the actual working hours.
6. The price is calculated according to the usual hourly rates of ARCH-embedded B.V., valid for the period in which he carries out the work, unless a different hourly rate has been agreed.
7. If the parties have agreed on a total amount for a service provided by ARCH-embedded B.V., this is always a target price, unless the parties have explicitly agreed upon in writing on a fixed price, which cannot be deviated from.
8. ARCH-embedded B.V. is entitled to deviate up to 10% of the target price.
9. If the target price exceeds 10%, ARCH-embedded B.V. must let the customer know in due time why a higher price is justified.

10. If the target price exceeds 10%, the customer has the right to cancel the part of the order that exceeds the target price by 10%.
11. ARCH-embedded B.V. has the right to adjust prices annually.
12. ARCH-embedded B.V. will communicate price adjustments to the customer prior to the moment the price increase becomes effective.
13. The consumer has the right to terminate the contract with ARCH-embedded B.V. if he does not agree with the price increase.

Payments and payment term

1. ARCH-embedded B.V. may, at the conclusion of the agreement, require a down payment of up to 50% of the agreed amount.
2. The customer must pay invoices of ARCH-embedded B.V. within 14 days, unless parties have made other agreements about this or if the invoice has a different payment term.
3. Payment terms are considered as fatal payment terms. This means that if the customer has not paid the agreed amount at the latest on the last day of the payment term, he is legally in default, without ARCH-embedded B.V. having to send the customer a reminder or to put him in default.
4. ARCH-embedded B.V. reserves the right to make a delivery conditional upon immediate payment or to require adequate security for the total amount of the services or products.

Consequences of late payment

1. If the customer does not pay within the agreed term, ARCH-embedded B.V. is entitled to charge an interest of 8% per month for commercial transactions from the day the customer is in default, whereby a part of a month is counted for a whole month.
2. When the customer is in default, he is also due to extrajudicial collection costs and may be obliged to pay any compensation to ARCH-embedded B.V..
3. The collection costs are calculated on the basis of the Reimbursement for extrajudicial collection costs.
4. If the customer does not pay on time, ARCH-embedded B.V. may suspend its obligations until the customer has met his payment obligation.
5. In the event of liquidation, bankruptcy, attachment or suspension of payment on behalf of the customer, the claims of ARCH-embedded B.V. on the customer are immediately due and payable.
6. If the customer refuses to cooperate with the performance of the agreement by ARCH-embedded B.V., he is still obliged to pay the agreed price to ARCH-embedded B.V..

Right of recovery of goods

1. As soon as the customer is in default, ARCH-embedded B.V. is entitled to invoke the right of recovery with regard to the unpaid products delivered to the customer.
2. ARCH-embedded B.V. invokes the right of recovery by means of a written or electronic announcement.
3. As soon as the customer has been informed of the claimed right of recovery, the customer must immediately return the products concerned to ARCH-embedded B.V., unless the parties agree to make other arrangements about this.
4. The costs for the collection or return of the products are at the expense of the customer.

Suspension of obligations by the customer

The customer waives the right to suspend the fulfillment of any obligation arising from this agreement.

Right of retention

1. ARCH-embedded B.V. can appeal to his right of retention of title and in that case retain the products sold by ARCH-embedded B.V. to the customer until the customer has paid all outstanding invoices with regard to ARCH-embedded B.V., unless the customer has provided sufficient security for these payments.
2. The right of retention of title also applies on the basis of previous agreements from which the customer still owes payments to ARCH-embedded B.V..
3. ARCH-embedded B.V. is never liable for any damage that the customer may suffer as a result of using his right of retention of title.

Settlement

The customer waives his right to settle any debt to ARCH-embedded B.V. with any claim on ARCH-embedded B.V..

Retention of title

1. ARCH-embedded B.V. remains the owner of all delivered products until the customer has fully complied with all its payment obligations with regard to ARCH-embedded B.V. under whatever agreement with ARCH-embedded B.V. including of claims regarding the shortcomings in the performance.
2. Until then, ARCH-embedded B.V. can invoke its retention of title and take back the goods.
3. Before the property is transferred to the customer, the customer may not pledge, sell, dispose of or otherwise encumber the products.
4. If ARCH-embedded B.V. invokes its retention of title, the agreement will be dissolved and ARCH-embedded B.V. has the right to claim compensation, lost profits and interest.

Delivery

1. Delivery takes place while stocks last.
2. Delivery takes place at ARCH-embedded B.V. unless the parties have agreed upon otherwise.
3. Delivery of products ordered online takes place at the address indicated by the customer.
4. If the agreed price is not paid on time, ARCH-embedded B.V. has the right to suspend its obligations until the agreed price is fully paid.
5. In the event of late payment, the customer is automatically in default, and hereby he cannot object to late delivery by ARCH-embedded B.V..

Delivery period

1. Any delivery period specified by ARCH-embedded B.V. is indicative and does not give the customer the right to dissolution or compensation if this period is not met with, unless the parties have expressly agreed otherwise in writing.
2. The delivery period starts after the customer has signed the agreement to ARCH-embedded B.V. and is confirmed in writing or electronically by ARCH-embedded B.V. to the customer.
3. Exceeding the specified delivery period does not entitle the customer to compensation or the right to terminate the contract, unless ARCH-embedded B.V. cannot deliver within 14 days after the customer has urged him to do so in writing or if the parties have agreed upon otherwise.

Actual delivery

The customer must ensure that the actual delivery of the products ordered by him can take place in time.

Transport costs

Transport costs are paid by the customer, unless the parties have agreed upon otherwise.

Packaging and shipping

1. If the package of a delivered product is opened or damaged, the customer must have a note drawn up by the forwarder or delivery person before receiving the product. In the absence of which ARCH-embedded B.V. may not be held liable for any damage.
2. If the customer himself takes care of the transport of a product, he must report any visible damage to products or the packaging prior to the transport to ARCH-embedded B.V., failing which ARCH-embedded B.V. cannot be held liable for any damage.

Insurance

1. The customer undertakes to insure and keep insured the following items adequately against fire, explosion and water damage as well as theft:
 - goods delivered that are necessary for the execution of the underlying agreement
 - goods being property of ARCH-embedded B.V. that are present at the premises of the customer
 - goods that have been delivered under retention of title
2. At the first request of ARCH-embedded B.V., the customer provides the policy for these insurances for inspection.

Storage

1. If the customer orders products later than the agreed delivery date, the risk of any quality loss is entirely for the customer.
2. Any extra costs as a result of premature or late purchase of products are entirely at the customer's expense.

Guarantee

1. When parties have entered into an agreement with services included, these services only contain best-effort obligations for ARCH-embedded B.V., not obligations of results.
2. The warranty relating to products only applies to defects caused by faulty manufacture, construction or material.
3. The warranty does not apply in the event of normal wear and tear and damage resulting from accidents, changes made to the product, negligence or improper use by the customer, or when the cause of the defect cannot clearly be established.
4. The risk of loss, damage or theft of the products that are the subject of an agreement between the parties, will pass on to the customer when these products are legally and/or factually delivered, at least are in the power of the customer or of a third party who receives the product for the benefit of the customer.

Performance of the agreement

1. ARCH-embedded B.V. executes the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.
2. ARCH-embedded B.V. has the right to have the agreed services (partially) performed by third parties.
3. The execution of the agreement takes place in mutual consultation and after written agreement and payment of the possibly agreed advance by the customer.
4. It is the responsibility of the customer that ARCH-embedded B.V. can start the implementation of the agreement on time.
5. If the customer has not ensured that ARCH-embedded B.V. can start the implementation of the agreement in time, the resulting additional costs and/or extra hours will be charged to the customer.

Duty to inform by the customer

1. The customer shall make available to ARCH-embedded B.V. all information, data and documents relevant to the correct execution of the agreement to in time and in the desired format and manner.
2. The customer guarantees the correctness, completeness and reliability of the information, data and documents made available, even if they originate from third parties, unless otherwise ensuing from the nature of the agreement.
3. If and insofar as the customer requests this, ARCH-embedded B.V. will return the relevant documents.
4. If the customer does not timely and properly provides the information, data or documents reasonably required by ARCH-embedded B.V. and the execution of the agreement is delayed because of this, the resulting additional costs and extra hours will be charged to the customer.

Duration of the service agreement

1. The agreement between ARCH-embedded B.V. and the customer is entered into for an indefinite period of time, unless it results otherwise from the nature of the agreement or the parties have expressly agreed otherwise in writing.
2. If a fixed-term contract has been entered into, it will be tacitly converted into an open-ended contract at the end of the term, unless 1 of the parties terminates the contract with due observance of a notice period of 3 month(s), or if a consumer terminates the agreement with due observance of a notice period of 1 month causing the agreement to end at the end of the fixed term.
3. If the parties have agreed upon a term for the completion of certain activities, this is never a strict deadline, unless specified explicitly otherwise in writing. If this term is exceeded, the customer must give ARCH-embedded B.V. a written reasonable term to terminate the activities, before it may either terminate the contract or claim damages.

Cancellation of the contract for an indefinite period of time

1. The customer can terminate an agreement that has been concluded for an indefinite period at any time with due observance of a notice period of 3 months.
2. A consumer has the right to terminate an agreement for an indefinite period with due observance of a notice period of 1 month.

Intellectual property

1. ARCH-embedded B.V. retains all intellectual property rights (including copyright, patent rights, trademark rights, design and design rights, etc.) on all designs, drawings, writings, data carriers or other information, quotations, images, sketches, models, scale models, etc., unless parties have agreed otherwise in writing.
2. The customer may not copy or have copied the intellectual property rights without prior written permission from ARCH-embedded B.V., nor show them to third parties and / or make them available or use them in any other way.

Confidentiality

1. The client keeps any information he receives (in whatever form) from ARCH-embedded B.V. confidential.
2. The same applies to all other information concerning ARCH-embedded B.V. of which he knows or can reasonably suspect that it is secret or confidential, or of which it can expect that its disclosure may cause damage to ARCH-embedded B.V..
3. The customer takes all necessary measures to ensure that he keeps the information referred to in paragraphs 1 and 2 secret.
4. The obligation of secrecy described in this article does not apply to information:
 - which was already made public before the customer heard this information or which later became public without being the result of a violation of the customer's duty to confidentiality
 - which is made public by the customer due to a legal obligation
5. The confidentiality obligation described in this article applies for the duration of the underlying agreement and for a period of 3 years after the end thereof.

Penalties

1. If the customer violates the articles of these general terms and conditions about secrecy or intellectual property, then he forfeits on behalf of ARCH-embedded B.V. an immediately due and payable fine of € 1.000 if the customer is a consumer and € 5.000 if the customer is a company, for each violation and in addition an amount of 5% of the aforementioned amount for each day that this violation continues.
2. No actual damage, prior notice of default or legal proceedings are required in forfeiting the fine referred to in the first paragraph of this article.
3. The forfeiture of the fine referred to in the first paragraph of this article shall not affect the other rights of ARCH-embedded B.V. including its right to claim compensation in addition to the fine.

Indemnity

The customer indemnifies ARCH-embedded B.V. against all third-party claims that are related to the products and/or services supplied by ARCH-embedded B.V..

Complaints

1. The customer must examine a product or service provided by ARCH-embedded B.V. as soon as possible for possible shortcomings.
2. If a delivered product or service does not comply with what the customer could reasonably expect from the agreement, the customer must inform ARCH-embedded B.V. of this as soon as possible, but in any case within 1 month after the discovery of the shortcomings.
3. Consumers must inform ARCH-embedded B.V. of this within two months after detection of the shortcomings.
4. The customer gives a detailed description as possible of the shortcomings, so that ARCH-embedded B.V. is able to respond adequately.
5. The customer must demonstrate that the complaint relates to an agreement between the parties.
6. If a complaint relates to ongoing work, this can in any case not lead to ARCH-embedded B.V. being forced to perform other work than has been agreed.

Giving notice

1. The customer must provide any notice of default to ARCH-embedded B.V. in writing.
2. It is the responsibility of the customer that a notice of default actually reaches ARCH-embedded B.V. (in time).

Joint and several Client liabilities

If ARCH-embedded B.V. enters into an agreement with several customers, each of them shall be jointly and severally liable for the full amounts due to ARCH-embedded B.V. under that agreement.

Liability of ARCH-embedded B.V.

1. ARCH-embedded B.V. is only liable for any damage the customer suffers if and insofar as this damage is caused by intent or gross negligence.
2. If ARCH-embedded B.V. is liable for any damage, it is only liable for direct damages that results from or is related to the execution of an agreement.
3. ARCH-embedded B.V. is never liable for indirect damages, such as consequential loss, lost profit, lost savings or damage to third parties.
4. If ARCH-embedded B.V. is liable, its liability is limited to the amount paid by a closed (professional) liability insurance and in the absence of (full) payment by an insurance company of the damages the amount of the liability is limited to the (part of the) invoice to which the liability relates.
5. All images, photos, colors, drawings, descriptions on the website or in a catalog are only indicative and are only approximate and cannot lead to any compensation and/or (partial) dissolution of the agreement and/or suspension of any obligation.

Expiry period

Every right of the customer to compensation from ARCH-embedded B.V. shall, in any case, expire within 12 months after the event from which the liability arises directly or indirectly. This does not exclude the provisions in article 6: 89 Dutch Civil Code.

Dissolution

1. The customer has the right to dissolve the agreement if ARCH-embedded B.V. imputably fails in the fulfillment of his obligations, unless this shortcoming does not justify termination due to its special nature or because it is of minor significance.
2. If the fulfillment of the obligations by ARCH-embedded B.V. is not permanent or temporarily impossible, dissolution can only take place after ARCH-embedded B.V. is in default.
3. ARCH-embedded B.V. has the right to dissolve the agreement with the customer, if the customer does not fully or timely fulfill his obligations under the agreement, or if circumstances give ARCH-embedded B.V. good grounds to fear that the customer will not be able to fulfill his obligations properly.

Force majeure

1. In addition to the provisions of article 6:75 Dutch Civil Code, a shortcoming of ARCH-embedded B.V. in the fulfillment of any obligation to the customer cannot be attributed to ARCH-embedded B.V. in any situation independent of the will of ARCH-embedded B.V., when the fulfillment of its obligations towards the customer is prevented in whole or in part or when the fulfillment of its obligations cannot reasonably be required from ARCH-embedded B.V. .
2. The force majeure situation referred to in paragraph 1 is also applicable - but not limited to: state of emergency (such as civil war, insurrection, riots, natural disasters, etc.); defaults and force majeure of suppliers, deliverymen or other third parties; unexpected disturbances of power, electricity, internet, computer or telecoms; computer viruses, strikes, government measures, unforeseen transport problems, bad weather conditions and work stoppages.
3. If a situation of force majeure arises as a result of which ARCH-embedded B.V. cannot fulfill one or more obligations towards the customer, these obligations will be suspended until ARCH-embedded B.V. can comply with it.
4. From the moment that a force majeure situation has lasted at least 30 calendar days, both parties may dissolve the agreement in writing in whole or in part.
5. ARCH-embedded B.V. does not owe any (damage) compensation in a situation of force majeure, even if it has obtained any advantages as a result of the force majeure situation.

Changes in the general terms and conditions

1. ARCH-embedded B.V. is entitled to amend or supplement these general terms and conditions.
2. Changes of minor importance can be made at any time.

3. Major changes in content will be discussed by ARCH-embedded B.V. with the customer in advance as much as possible.
4. Consumers are entitled to cancel the agreement in the event of a substantial change to the general terms and conditions.

Transfer of rights

1. The customer cannot transfer its rights deferring from an agreement with ARCH-embedded B.V. to third parties without the prior written consent of ARCH-embedded B.V..
2. This provision applies as a clause with a property law effect as referred to in Section 3:83 (2) Dutch Civil Code.

Consequences of nullity or annulability

1. If one or more provisions of these general terms and conditions prove null or annulable, this will not affect the other provisions of these terms and conditions.
2. A provision that is null or annulable shall, in that case, be replaced by a provision that comes closest to what ARCH-embedded B.V. had in mind when drafting the conditions on that issue.

Applicable law and competent court

1. Dutch law is exclusively applicable to all agreements between the parties.
2. The Dutch court in the district where ARCH-embedded B.V. is established is exclusively competent in case of any disputes between parties, unless the law prescribes otherwise.

Attribution

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